

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayar  
Marshall Johnson  
Ken Nickolai  
Tomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint of Level 3  
Communications, LLC (Level 3) Against  
Qwest Corporation (Qwest) Regarding  
Compensation for ISP-Bound Traffic

ISSUE DATE: June 3, 2005

DOCKET NO. P-421/C-05-721

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On May 9, 2005, Level 3 Communications, LLC (Level 3) filed a complaint alleging that Qwest Corporation (Qwest) had –

- failed to pay Level 3 for calls originating on Qwest's network and terminating to an internet service provider (ISP) on Level 3's network, in violation of the interconnection agreement between Level 3 and Qwest,
- failed to negotiate in good faith an amendment to the agreement reflecting change in law, and
- threatened to interrupt service.

On May 23, 2005, Qwest filed an answer denying the bulk of Level 3's allegations. Qwest also complained that Level 3 was circumventing the terms of their interconnection agreement by –

- using the local interconnection service cables (LIS trunks) connecting their two networks inappropriately,
- assigning telephone numbers inappropriately, and
- failing to abide by the interconnection agreement's amendment process.

The Commission met on May 24, 2005, to consider this matter and subsequently issued its ORDER ASSERTING JURISDICTION, DENYING REQUEST FOR TEMPORARY RELIEF, AND REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS.

**FINDINGS AND CONCLUSIONS**

**I. JURISDICTION, GROUNDS TO INVESTIGATE, AND REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission has jurisdiction over the complaint of Level 3 against Qwest, and over Qwest's cross-complaint, under Minnesota Statutes §§ 237.081, subdivision 1a, 237.12 and 237.462.

The Commission finds that it cannot satisfactorily resolve all questions regarding the issues raised by

the parties in this matter on the basis of the parties' filings and oral arguments. The Commission will therefore refer the matter to the OAH for contested case proceedings pursuant to Minnesota Statutes § 237.081, subdivision 2(c).

## **II. ISSUES TO BE ADDRESSED**

In the course of the contested case proceedings ordered herein, the parties will address the issues set forth in Level 3's complaint and Qwest's cross-complaint. The Commission asks the ALJ to make findings and recommendations regarding these issues.

## **III. PROCEDURAL OUTLINE**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7602.

### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes §§ 14.57-14.62; the OAH's rules, Minnesota Rules parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minnesota Rules parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The OAH conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minnesota Rules part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents. Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minnesota Rules parts 1400.6700 to 1400.6800 or informal disposition under Minnesota Rules part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2218; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minnesota Statutes § 14.60, subdivision 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Level 3, Qwest, and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules part 1400.6200.

### **D. Prehearing Conference**

The Commission asks the ALJ to set the time, date, and place of the prehearing conference in this matter after consultation with the Commission and intervening parties. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

## **IV. APPLICATION OF ETHICS IN GOVERNMENT ACT**

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes §§ 10A.01 *et seq.*, apply to cases involving ratesetting, among others. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

## **V. *EX PARTE* COMMUNICATIONS**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minnesota Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

### **ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

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MPUC Docket No. P-421/C-05-721

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**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 341-7602.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_